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IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

GENERAL MOTORS CORPORATION,
Petitioner,

v.

NORMAN DUERR,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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REPLY BRIEF OF PETITIONER

Of Counsel:
DINSMORE & SHOHL
2100 Fountain Square
511 Walnut Street
Cincinnati, Ohio 45202-3172

DAVID M. DAVIS
(Counsel of Record)
HARDY, LEWIS, POLLARD & PAGE
401 South Woodward Avenue
Suite 400
Birmingham, Michigan 48009
(313) 645-0800

ALICE M. OSBURN
GENERAL MOTORS CORPORATION
3031 West Grand Boulevard
Detroit, Michigan 48202
(313) 556-5000

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REPLY BRIEF OF PETITIONER

INTRODUCTION

The brief in opposition attempts to minimize the importance of the conflict between the Sixth Circuit decision below and decisions of this Court, as well as the conflict between the Sixth Circuit decision and decisions of other circuits on the question of whether a claim for benefits under an ERISA-covered plan "relates to" such plan and therefore is preempted by federal law. The brief in opposition also ignores the premise that whether a federal statute preempts state law causes of action depends on congressional intent, rather than the three-

factor test adopted by the Sixth Circuit. "The purpose of Congress is the ulitmate touchstone." *Allis Chalmers Corp. v. Lueck*, 471 U.S. 202, 208 (1985).

Further, Respondent's attempt to narrow his claim and suggest that he complains only of the employer's failure to return him to an hourly rated position is totally inconsistent with the allegations of the Complaint. Such Complaint indicates that Respondent's *sole* motive in seeking transfer to an hourly rated position was to obtain benefits under GM's Voluntary Termination of Employment Plan, VTEP (Pet. App. 23a, ¶¶ 8-12): "Plaintiff was promised by Defendant . . . that he could return to an hourly rated position . . . *in order to take VTEP.*" (emphasis added) (¶ 12).

Had there been no VTEP there would have been no claim.[1] Respondent's Prayer (Pet. App. 25a) seeks "damages in the sum of the VTEP payment," and "attorney's fees under ERISA." Count III claims unlawful interference with his attainment of a benefit under an ERISA-covered plan in violation of § 510 of ERISA, 29 U.S.C. § 1140 (Pet App. 25a).

Similarly the plaintiff in *Ingersoll-Rand v. McClendon*, 59 U.S.L.W. 4033 (U.S. Dec. 3, 1990) suggested that his claim only concerned the employer's improper motive in terminating his employment. Such contention was rejected by this Court: "[t]he argument misses the point, which is that under the Texas court's analysis there simply is *no* cause of action if there is no plan." *Ingersoll-Rand, supra*, at 4035.

This conflict among the circuit courts imperatively calls for resolution because of the large number of people who are affected. In the United States there are approximately 500,000 private pension plans which cover over

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[1] It is illogical that Respondent sought to be demoted to an hourly position so that he could continue in employment. Rather this was the means he selected to obtain VTEP benefits.

50 million employees. There also are approximately 1.7 million private employee welfare plans,[2] Congress intended to assure uniformity in the administration of these plans by creating federal fiduciary standards. See 29 U.S.C. 1001(b): "It is hereby declared to be the policy of this chapter to protect interstate commerce . . . by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, . . ." By allowing state law to apply to claims for benefits under ERISA-covered employee welfare benefit plans, the Sixth Circuit had defeated that fundamental statutory purpose.

The resulting confusion over ERISA preemption is highly detrimental to the public interest. Neither employees nor employers should be compelled to waste resources in protracted litigation applying varied state laws in resolving claims for ERISA benefits. It is highly prejudicial to employees, who have limited resources, and to employers, who face large numbers of ERISA claims, to be encumbered with such needless burden and expense.

I. RESPONDENT'S CLAIM NECESSARILY ARISES UNDER FEDERAL LAW

Respondent's statement of facts (Opp. 2-7) as well as his complaint (Pet. App. 22a) clearly demonstrate that he seeks only benefits under the VTEP. His prayer for relief included "compensatory damages in the sum of the VTEP payment[3] . . ." and "attorney's fees under

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[2] U.S. Department of Labor, *Pension and Welfare Benefits Programs, Estimates of Participants and Welfare Benefits Programs* 1 (1983); 4 Health and Population Study Center, *Employee Welfare Benefit Plans and Plan Sponsors in the Private Nonfarm Sector in the United States 1978-1979* 24 (1980).

[3] Respondent's suggestion that he seeks no benefit under the plan, but rather an amount equal to such benefit cannot evade ERISA federal jurisdiction. In *Phillips v. Amoco Oil Company*, 799 F.2d 1464 (11th Cir. 1986) the Eleventh Circuit rejected a similar argument: "This request for damages demonstrates that the employees' fraud claim not only 'relates to' an employee benefit plan, but is at its core an ERISA claim." *Phillips, supra*, at 1470.

ERISA," see Pet. App. 25a. There is no dispute that the benefits sought are provided by General Motors under an employee welfare benefit plan as defined in § 3(1) of ERISA, 29 U.S.C. § 1002(1). (Pet. App. 20a.)

Respondent's brief in opposition offers no reason for doubting this claim for VTEP benefits arises solely under federal common law. As this Court explained in *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 24 n. 26 (1983):

> ERISA's legislative history indicates that, in light of the Act's virtually unique preemption provision, see § 514, 29 U.S.C. § 1144, "a body of Federal substantive law will be developed by the courts to deal with issues involving rights and obligations under private welfare and pension plans."

And as Justices Brennan, White, Marshall, and Blackmun pointed out in their concurring opinion in *Massachusetts Mutual Life Ins. Co. v. Russell*, 473 U.S. 134, 105 S.Ct. 3085, 3098 n. 14 (1985) (quoting conference report): "*All* such actions in federal or state courts are to be regarded as arising under the laws of the United States in similar fashion to those brought under Section 301 of the Labor-Management Relations Act of 1947" (emphasis supplied).

Similarly this Court in *Pilot Life Insurance Company v. Dedeaux*, 481 U.S. 41 (1987) explained that ERISA's civil enforcement remedies were exclusive:

> The deliberate care with which ERISA's civil enforcement remedies were drafted and the balancing of the remedies argue strongly for the conclusion that ERISA's civil enforcement remedies were intended to be exclusive. This conclusion is fully confirmed by the legislative history of the civil enforcement provision. The legislative history demonstrates that the pre-emptive force § 502(a) was modeled after § 301 of LMRA.

481 U.S. at 54.

Again in *Ingersoll-Rand v. McClendon*, 59 U.S.L.W. 4033 (U.S. Dec. 3, 1990), this Court held that plaintiff's claim that his employment was terminated unlawfully to preclude the vesting of his pension arose solely under federal law, ERISA. In *Ingersoll-Rand* this Court distinguished its holdings in *Mackey v. Lanier Collection Agency & Service, Inc.*, 486 U.S. 825 (1988) (ERISA did not preempt state's general garnishment statute even though it applied against participants in welfare benefit plan) and *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1 (1987) (State law requiring the payment of severance benefits not preempted by ERISA because statute does not require establishment or maintenance of an ongoing plan):

> Neither of these limitations is applicable to this case. We are not dealing here with a generally applicable statute that makes no reference to, or indeed functions irrespective of, the existence of an ERISA plan. Nor is the cost of defending this lawsuit a mere administration burden. Here, the existence of a pension plan is a critical factor in establishing liability under the State's wrongful discharge law. As a result, this cause of action relates not merely to pension benefits, but to the essence of the pension *plan* itself.

59 U.S.L.W. at 4035.

These principles, repeatedly declared by this Court in recent decisions, demonstrate the fundamental error in the decision of the court of appeals. Because of the conflict with past decisions rendered by this Court, the present case plainly is appropriate for review.

II. ERISA PREEMPTION CANNOT BE AVOIDED BY CHARACTERIZING THE CLAIM FOR BENEFITS UNDER AN ERISA-COVERED BENEFIT PLAN AS SOLELY A CLAIM AGAINST THE EMPLOYER

Respondent suggests that because his claim is against the employer for its failure to keep a promise unrelated to the administration of the plan,[4] the outcome will not implicate benefit plans (Opp. 27). Such is not the case.

Congress' central purpose in limited ERISA remedies was to carefully balance the protections afforded employees against the liabilities to which employers would be exposed by establishing and maintaining benefit plans. The success of the employee benefit system is largely dependent upon the employer's voluntary decision to establish and maintain pension and welfare plans in the first instance. Congress knew that imposition of excessive liabilities upon employers would discourage the formation of new plans. In *Massachusetts Mutual Life Ins. Co. v. Russell*, *supra*, this Court stated: "Congress was concerned lest the cost of federal standards discourage the growth of private pension plans," 473 U.S. at 148 n. 17. Similarly Senator Nelson emphasized the importance of this concern during floor debate on the bill that eventually was enacted:

> [Costs are] an important factor in determining whether a pension plan will be adopted. Unduly large increases in cost can impede the progress of the private pension system. For this reason, . . . Congress tried to adopt provisions which strike a balance between providing a meaningful protection for the employees and keeping costs within reasonable limits for employers.

102 Cong. Rec. S15,762 (daily ed. Aug. 22, 1974), 3 Leg. Hist. 4800.

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[4] General Motors Corporation is the administrator of the Voluntary Termination of Employment Plan, VTEP. Thus, Respondent, in bringing his claim against General Motors, necessarily is bringing a claim against the plan administrator.

There is nothing in ERISA's text or legislative history to indicate that Congress intended to protect only plan administrators and fiduciaries from additional state liabilities and oblibations. ERISA's preemption provision applies by its very terms to § 510 of ERISA, 29 U.S.C. § 1140, which imposes liability on employers who (unlike plan administrators and fiduciaries) are in a position to discriminate against or discharge employees.

The numerous employer obligations imposed by ERISA are plainly part and parcel of ERISA's integrated regulatory scheme. While it is the employer who must decide to establish a benefit plan and who determines the level of benefits provided (voluntary decisions outside the scope of the law), once the plan is established ERISA imposes numerous specific obligations on the employer.[5] These employer obligations are part of the careful balancing of the rights of plan beneficiaries, fiduciaries and employers fashioned by Congress when ERISA was enacted, a balancing premised upon the need to avoid discouraging the establishment or continuation of benefit plans.

As the House Report stated, Congress was "constrained to recognize the voluntary nature of private" plans and accordingly weighed "[t]he relative improvements required by this Act . . . against the additional burdens to be placed on the system." H.R. Rep. No. 533, 93d Cong., 1st Sess. 1 (1973), 2 Leg. Hist. 2348. Senator Long explained the importance of carefully defined limited employer liabilities during the floor debate prior to the final passage:

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[5] See for example 29 U.S.C. §§ 1053, 1053, 1082, and 1083, imposing participation, vesting standards and levels of funding required by the employer with respect to pension plans; 29 U.S.C. § 1059 imposing reporting obligations on employers; and 29 U.S.C. §§ 1140 and 1141 prohibiting employers from interfering with benefit attainment and prohibiting intimidation of plan participants by employers.

> We who have worked intimately on this legislation have always kept in mind that private pension plans depend for their very existence on voluntary action. We know that new pension plans will not be adopted and that existing plans will not be expanded and liberalized if the costs are made overly burdensome, *particularly for employers* who generally foot most of the bill. This would be self defeating and would hurt rather than help the employees for whose benefit the legislation is designed.

120 Cong. Rec. 29944-45 (1974), 2 Leg. Hist. 4778 (emphasis added).

Respondent's erroneously suggests that because his claim is against the employer it does not implicate the administration of the plan. Such premise was clearly rejected by Congress in the design and enactment of ERISA. Such premise was also rejected by this Court in *Ingersoll-Rand v. McClendon, supra.*

III. THE SIXTH CIRCUIT DECISION BELOW UTILIZING A THREE-FACTOR TEST IN DETERMINING PREEMPTION CONFLICTS WITH DECISIONS OF THIS COURT, ADDS CONFUSION IN INTERPRETING ERISA, AND SHOULD BE REVIEWED BY THIS COURT

The question presented by the petition is not one of mere academic concern. It arises frequently in litigation in federal district courts. And it can be expected to arise with increasing frequency due to the opinions of this Court and other circuits which conflict with the Sixth Circuit decision below. Ths is certain to generate large expenses for the sponsors of ERISA plans, and to undermine the Congressional goal of efficient plan administration.

The brief in opposition merely attempts to demonstrate that the Respondent's claims satisfy the three-factor

test [6] adopted by the Sixth Circuit below. It fails to address or support the validity of such three-factor test. This Court has clearly enunciated on several occasions the method of determining whether a claim "relates to" an employee benefit plan covered by ERISA. In *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85 (1983) this Court explained that "[i]n deciding whether a federal law preempts a state statute, our task is to ascertain Congress' intent in enacting the federal statute at issue." In interpreting the "relate to" clause of § 514 of ERISA, this Court in *Shaw* held that "[a] law 'relates to' an employee benefit plan in the normal sense of the phrase, if it has a connection with or reference to such a plan." *Shaw*, *supra*, at 96-97. This definition was again applied in *FMC Corporation v. Holliday*, 59 U.S.L.W. 4009, 4011 (U.S. Nov. 27, 1990).

In *Ingersoll-Rand*, *supra*, at 4034, this Court noted: "[T]he question whether a certain state action is preempted by federal law is one of congressional intent." This Court further explained in *Pilot Life Insurance Co.*, *supra*, that federal preemption necessarily results in the exclusion of otherwise available state remedies:

> [T]he detailed provisions of § 502(a) set forth a comprehensive enforcement scheme that represents a careful balancing of the need for prompt and fair claims settlement procedures against the public interest in encouraging the formation of employee benefit plans. *The policy choices reflected in the inclusion of certain remedies and the exclusion of others under the federal scheme would be completely undermined if ERISA-plan participants and beneficiaries were free to obtain remedies under state*

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[6] The Sixth Circuit below relied on a three-factor test to determine whether a claim relates to a benefit plan: (1) whether ERISA provides a remedy, (2) whether benefits are sought under the plan, and (3) whether the claim implicates the administration of the plan, see Pet. App. 5a.

> *law that Congress rejected in ERISA.* (emphasis added)

481 U.S. at 54.

The confusion resulting from the Sixth Circuit decision below and from the decision in *Perry v. P*I*E* Nationwide, Inc.*, 872 F.2d 157 (6th Cir. 1989) (concluding that the lack of a federal remedy was a key factor in denying preemption) is not imaginary. The district court in *Isaac v. Life Investors Insurance Co.*, 749 F. Supp. 855 (E.D. Tenn. 1990), upon reviewing conflicting Sixth Circuit decisions, lamented: "This Court is, therefore, left in a quandry." See Pet. pp. 16-17.

Failure to give effect to ERISA's preemption clause in cases seeking benefits under ERISA-covered benefit plans—which go to the very heart of the operation of ERISA's benefit plans—poses a serious threat to the integrity of the federal statutory scheme.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

Of Counsel:
DINSMORE & SHOHL
2100 Fountain Square
511 Walnut Street
Cincinnati, Ohio 45202-3172

DAVID M. DAVIS
(Counsel of Record)
HARDY, LEWIS, POLLARD & PAGE
401 South Woodward Avenue
Suite 400
Birmingham, Michigan 48009
(313) 645-0800

ALICE M. OSBURN
GENERAL MOTORS CORPORATION
3031 West Grand Boulevard
Detroit, Michigan 48202
(313) 556-5000